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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,508	05/24/2001	Runhai Lu	MBC-0418	2437

23575 7590 04/10/2003

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EXAMINER	
GREEN, ANTHONY J	
ART UNIT	PAPER NUMBER
1755	6

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/864,508	Applicant(s) LU, RUNHAI	
	Examiner Anthony J. Green	Art Unit 1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-38 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-38 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4&5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 it is unclear as to the amounts and types of each component that may be utilized.

In claim 6 the phrase "the polymeric latex" lacks proper antecedent basis.

In claim 11 it is unclear as to the amounts and types of each component that may be utilized.

In claim 18 the phrase "the polymeric latex" lacks proper antecedent basis.

In claim 25 it is unclear as to the amounts and types of each component that may be utilized.

In claim 32 the phrase "the polymeric latex" lacks proper antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4, 7-16, 19-30 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT International Application No. 98/05709.

The reference teaches, in the abstract and the claims, mortar admixtures and cementitious compositions comprising the admixture wherein the admixture comprises (a) at least one C_8-C_{30} fatty acid or a derivative thereof such as a salt, ester, or triglyceride, (b) a flexural bond strength enhancing material comprising a polymer having a backbone. The admixture may also comprise a air entraining admixture as a preferred additive.

The instant claims are obvious over the reference. Page 4, lines 21+ teach examples of the C_8-C_{30} fatty acid or a derivative thereof which includes butyl stearate and palmitate. Page 13, lines 18+ teach examples of the preferred air entraining additives that may be utilized which includes ethoxylated alkylphenols, ethoxylated alcohols etc. While the reference does not specifically teach the same composition as claimed by applicant, it does provide the motivation for one of ordinary skill in the art to produce the same composition as the reference teaches the use of the same components. "A reference can be used for all it realistically teaches and is not limited

to the disclosures in its specific examples". See In re Van Marter et al 144 USPQ 421; In re Windmer et al 147 USPQ 518, 523; and In re Chapman et al 148 USPQ 711. Note that the C_8-C_{30} fatty acid or a derivative thereof may be selected from butyl stearate and that the air-entraining agent may be selected from an ethoxylated alkyl phenol and these are the same as instantly claimed. Accordingly the reference provides the motivation to produce a composition the same as instantly claimed and therefore absent evidence to the contrary or unexpected results, the instant claims are rendered obvious by the reference.

5. Claims 1-5, 7-8, 10-17, 19, 22-25, 28-31, 33 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al (US Patent No. 5,763,508).

The reference teaches, in the abstract and the claims, a dispersion powder for use in mortars and concrete comprising a polymer, a protective colloid, at least one saturated carboxylic acid ester and an anticaking agent. According to claim 13 the carboxylic acid ester may be selected from butyl stearate, butyl palmitate, etc. Column 3, lines 55+ teach that other cement additives such as cement liquefiers, wetting agents etc. may be added if desired.

The instant claims are obvious over the reference. While the reference does not specifically teach the addition of a surfactant, it does teach that wetting agents may be added. It is the position of the examiner that since wetting agents are examples or types of surfactants, it would have been obvious to one of ordinary skill in the art to add a surfactant to the composition since the reference teaches that wetting agents may be added. As for the type of surfactant (i.e.

anionic etc), these are well known types of surfactants. As stated above "A reference can be used for all it realistically teaches and is not limited to the disclosures in its specific examples". See In re Van Marter et al 144 USPQ 421; In re Windmer et al 147 USPQ 518, 523; and In re Chapman et al 148 USPQ 711. Accordingly, in the absence of evidence to the contrary it would have been obvious to incorporate a surfactant into the composition of the reference and arrive at the instant invention especially since the optional addition of wetting agents is taught.

6. Claims 1-3, 5-7, 10-15, 17-19, 22-29, 31-33 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eash (US Patent No. 4,151,150).

The reference teaches, in the abstract and the claims, a cement additive consisting essentially of a styrene-butadiene interpolymeric latex, a non-ionic surfactant, an anionic surfactant and a foam depressant. Column 2, lines 44+ teach that the nonionic surfactants include fatty acid esters such as glycerol monostearate, diethylene glycol laurate etc. Column 3, lines 1+ teach the types of anionic surfactants that may be utilized.

The instant claims are obvious over the reference. While the reference does not specifically teach the instant composition it does provide the motivation for one of ordinary skill in the art to produce the instantly claimed composition as the reference teaches that various fatty acid esters of carboxylic acids may be utilized as the non-ionic surfactant. Again as stated previously, "A reference can be used for all it realistically teaches and is not limited to the disclosures in its specific examples". See In re Van Marter et al 144 USPQ 421; In re Windmer et

al 147 USPQ 518, 523; and In re Chapman et al 148 USPQ 711. Accordingly in the absence of unexpected results, it would have been obvious to incorporate a fatty acid ester surfactant into the composition of the reference and arrive at the instant invention especially since the reference teaches that various fatty acid esters of carboxylic acids may be utilized as the non-ionic surfactant which is a required component of the additive.

Information Disclosure Statement

7. The references cited by applicants have been considered, however they are not seen to teach or fairly suggest the instant invention.

References Cited By The Examiner

8. The remaining references are cited as showing the general state of the art and as such, they are not seen to teach or fairly suggest the instant invention.

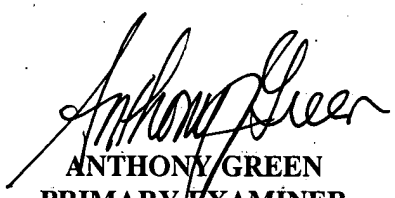
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Green whose telephone number is (703) 308-3819. The examiner can normally be reached on Monday - Thursday and alternate Fridays from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached on (703) 308-3823. The fax phone numbers for the Group are as follows:

(i) (703) 872-9310 for any non-final amendment or communication, and
(ii) (703) 872-9311 for any after-final amendment or communication.

It is suggested that the examiner be notified that a fax has been sent to ensure prompt handling of the amendment or communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



ANTHONY GREEN
PRIMARY EXAMINER
ART UNIT 1755

ajg
April 7, 2003